Exhibit 14

Page 1

1   IN THE UNITED STATES DISTRICT COURT
          FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

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     THE CITY OF HUNTINGTON,

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               Plaintiff,

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     vs.   CIVIL ACTION

7   NO. 3:17-01362

     AMERISOURCEBERGEN DRUG

8   CORPORATION, et al.,

9   Defendants.

10   _____

11   CABELL COUNTY COMMISSION,

12   Plaintiff,

13   vs.   CIVIL ACTION
                                            NO. 3:17-01665

14   AMERISOURCEBERGEN DRUG
     CORPORATION, et al.,

15

               Defendants.

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19   Videotaped and Zoom video conference
     deposition of JAMES RAFALSKI taken by the Defendants

20   under the Federal Rules of Civil Procedure in the
     above-entitled action, pursuant to notice, before

21   Jennifer Vail-Kirkbride, a Registered Merit
     Reporter, on the 11th day of September, 2020.

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1   millions you've actually reviewed?

2   A.   Yes, I have not reviewed any of them.

3   Q.   None of the initial orders, none of the

4   follow-up orders; correct?

5   A.   No, sir.

6   Q.   So you did not personally determine whether

7   any of the flagged orders when you look at them, you

8   actually consider them to be suspicious; correct?

9   A.   Well, I think the fact that they are

10   identified by the trigger, the algorithm, makes --

11   makes them not a suspicious order.

12   Q.   Okay. Did you individually review any of

13   them to see if you just looked at the order on its

14   face whether you would consider it to be suspicious?

15   A.   No, sir.

16   Q.   Did you individually look at any of them to

17   consider just based on the information you had about

18   the actual order whether you would consider it to be

19   likely to be diverted?

20   A.   Can you say that one more time, please.

21   Q.   Sure. Did you look at the individual

22   orders to consider whether based on the information

23   actually reflected in the individual orders, you

24   would make the judgment that there were likely to be

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1 diverted?

2   A. If -- just so I understand what you're

3 asking, if you are definitively asking me to tell

4 you a specific order was diverted, uhm, I cannot do

5 that. And that -- that was not part of how the

6 evaluation done and it was -- it was, basically, you

7 know, outside of -- of what I -- what I would

8 do. You know, the volume of orders and the totality

9 of the lack of due diligence didn't require me to

10 look at a specific order one by one.

11   That would have been in my time with

12 the DEA, that would not have ever been something I

13 did at the DEA. So, no, I didn't -- I didn't go in

14 and look at each specific order. I relied on the

15 trigger, the methodology, to identify those orders

16 when ran against the transactional data.

17   Q. My question is actually much simpler. Did

18 you look at any of the individual flagged orders to

19 come to a judgment in your view as to whether when

20 you actually look at the order and the details of

21 the order, you believe that it was likely to be

22 diverted?

23   A. I don't want to be argumentative, but I

24 think you're asking two different questions, so --

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1   or two -- it's kind of a compound question. First,

2   the algorithm's applied to the data and that's what

3   triggers the order. That's what brings it to my

4   report or triggers it and identifies it. Then

5   subsequent to that would -- you're asking about the

6   evaluation of that specific order.

7   Q. No, I am asking actually what's intended to

8   be a really simple question so maybe I can reframe

9   it.

10   You've got tens of millions of orders

11   you identify here; right?

12   A. I do.

13   Q. Did you look at any of those tens of

14   millions of orders in terms of the actual facts of

15   those orders to make a judgment that as to any one

16   of those tens of millions of orders, looking at the

17   order itself you believe that order is likely to be

18   diverted?

19   A. There -- I cannot definitively look at one

20   specific order and tell you that specific order was

21   diverted, if that's your question. I did not do

22   that and I couldn't -- I did not do that and I could

23   not do that.

24   Q. That's not my question. What I'm asking is

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1   understand one aspect of your flagging methodology,

2   please.   Exhibit A identifies tens of millions of

3   orders; correct?

4   A.   Yes.

5   Q.   And do I have your testimony correct that

6   you believe every single one of those orders are

7   likely to be diverted?

8   A.   I guess, I think I answered this

9   earlier.   If you -- if that question means that you

10   are asking me to definitively -- to tell you

11   definitively that every one of those orders,

12   individual orders were diverted, I don't -- I can't

13   do that, but my opinion is based on the lack of due

14   diligence, the systemic lack of due diligence, that

15   more likely than not they were.

16   Q.   All of them?

17   A.   More likely --

18   Q.   -- all of the millions were likely

19   diverted?

20   A.   More likely than not; yes, sir.

21   Q.   And where is that diversion occurring?

22   A.   I don't understand that question.   In a

23   geographic area of my evaluation of the -- the

24   distributors' distributions.

1   Q.   Where in the distribution process is that

2   diversion occurring?

3   A.   Uhm, from the distributor to the pharmacy.

4   Q.   So it's your testimony that there's

5   diversion of tens of minimums of pills between ABDC,

6   Cardinal, and McKesson and their pharmacies. That's

7   where the diversion is occurring?

8   A.   I'm saying more likely than not. Those --

9   so -- just so we're clear on this, those, the

10 flagging mechanism or the algorithm that flags those

11 orders, those are orders that were -- were sent from

12 each distributor to pharmacies in Cabell and

13 Huntington. The first order based on the total lack

14 of due diligence, the totality of all the due

15 diligence, that it's more likely than not that those

16 orders were diverted; yes, sir.

17   MR. SCHMIDT: Move to strike as

18 nonresponsive.

19   Q.   My question is where in the distribution

20 chain is the diversion occurring or is the diversion

21 more likely than not occurring? Is it at the

22 pharmacy level? Is it at the level once the

23 prescriptions have been dispensed? Is it between

24 McKesson and the pharmacy they're getting diverted?

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 1   Where is it?
 2        A.   Well, the diversion would occur without
 3   the -- with the absence of due diligence, a
 4   diversion would occur through the dispensing at the
 5   pharmacy and then subsequently on the street.
 6        Q.   Okay.   And do you know of these tens of
 7   millions of orders that you say are reasonably
 8   likely to be -- that are likely to be diverted, do
 9   you know how many of them you believe the diversion
10   is occurring on the street versus at the time of
11   dispensation?
12        A.   No, sir.
13        Q.   Do you know if it's 100 percent on the
14   street or less?
15        A.   I do not know, sir.
16        Q.   And when you say you believe they're likely
17   to be diverted, you keep using -- sounds to me like
18   a legalistic phrase, "more likely than not," what
19   does that mean?
20        A.   It's a -- it's a probability.   It's -- you
21   know, there's more likely than not [audio
22   distortion] something greater -- something greater
23   than -- than percentage-wise, it's more likely than
24   not that it's going to occur.   I don't know that it
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1   is defined by any specific percentage, but it's just

2   a statement if -- to look at something, would it be

3   diverted or not. My opinion would be more likely

4   that it would than it wouldn't, based on my review.

5   Q.   And are you literally saying at some level

6   greater than 50 percent?

7   A.   I don't apply a percentage to it.

8   Q.   Is there any math you did to say more

9   likely than not 51 percent chance they're going to

10   be diverted versus 49 percent versus something else?

11   A.   No, my opinion is based on my review of the

12   conduct of the three distributors and the fact that

13   they conducted no due diligence or very limited due

14   diligence. The policies, email communications,

15   their conduct.

16   Further -- further, when I reviewed

17   the actual suspicious orders that they identified

18   with using their own systems, I didn't see, uhm,

19   sufficient due diligence. In many cases I saw no

20   due diligence. So in a totality of all of those

21   circumstances, I make -- I draw to the opinion that

22   it was more likely than not that those orders were

23   diverted.

24   MR. SCHMIDT: Move to strike

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1   everything after no as completely nonresponsive.

2   Let me ask you respectfully, sir, just

3   to focus on my questions because I don't want to

4   have to ask for more time.

5   Q.   Is there any kind of special analysis you

6   did of these orders that lets you say there's a 50

7   percent chance they are going to be diverted,

8   there's 25 percent chance, there's a 75 percent

9   chance?

10   A.   Well, my special analysis was the review I

11   did of all of the records and all of the documents

12   to draw my conclusion. I didn't do any specific

13   analysis to put a percent on it, if that's your

14   question.

15   Q.   That's my question. Thank you. Did you

16   make any effort to trace these orders into the

17   Cabell County market to see if there was actual

18   diversion corresponding to these orders?

19   A.   To -- to actually -- as I -- as I stated

20   earlier, I didn't -- I can't definitively say that

21   any specific order was diverted. I did not conduct

22   any type of an investigation or review to try to

23   identify any specific orders. Back to my DEA

24   experience in the cases that I worked and the

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1   circumstances, community circumstances, DEA quota

2   levels, changes in prescribing practices, anything

3   like that; correct?

4   A.   Correct.

5   Q.   And so if Doctor McCann were given just

6   this example, August and everything after August

7   would be flagged; correct?

8   A.   Yes, sir.

9   Q.   And you would say that August and

10 everything after August would be likely to be

11 diverted; correct? Under your 51 percent, more

12 likely than not rationale; correct?

13   A.   Well, it's -- I didn't say 51 percent. And

14 if I'm using Methodology A with the due diligence

15 assumption, if the 10,100 was not investigated, if

16 there was no due diligence, the trigger is --

17 identifies the order.

18   The size, it could be 100, we settled

19 on because we don't do it a pill at a time or it

20 could be a million would stop the order, and if

21 there is no due diligence to clear that, more likely

22 than not independent of the size, any of those

23 subsequent orders could be subject to diversion

24 because the -- the -- there was no investigation to

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1   rule out they could be diverted.

2   MR. SCHMIDT: Move to strike as

3   totally nonresponsive.

4   Q. Let me just break down what I'm trying to

5   ask you and ask you to focus on my question.

6   Under Method A, August would be

7   flagged; correct?

8   A. Yes.

9   Q. And every month after August would be

10   flagged; correct?

11   A. Yes.

12   Q. Every month after August would be flagged

13   without looking at the diligence files; correct?

14   Just based on the assumption.

15   A. There would be -- there would be no

16   diligence. So I don't -- I don't anticipate --

17   Q. Will you answer my question.

18   A. I cannot answer that question because it --

19   Q. Do you know that Doctor McCann did not

20   review diligence files?

21   A. I do not believe he did.

22   Q. Okay. So when he flagged September,

23   October, November, December, and into Year 2, that's

24   not based on diligence file review; correct?

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1   A.   No, that's based on his running of the

2 algorithm as directed by me or requested by me.

3   Q.   Okay.   And under the algorithm, once an

4 order is flagged, everything is flagged; correct?

5 Because of an assumption; correct?

6   A.   That Doctor McCann ran; yes, sir.

7   Q.   Okay.   When you look at just this data, can

8 you tell me that the August order is more likely

9 than not, likely to be diverted?

10   A.   Yes.

11   Q.   Okay.   Can you tell me that the September

12 order is more likely than not, likely to be

13 diverted?

14   A.   Applying my standard, which is based on my

15 review of the due diligence records and the totality

16 of records, August 1st-- this August order would be

17 not cleared, no due diligence, then every subsequent

18 order would be more likely than not diverted.

19   MR. SCHMIDT: Move to strike as

20 nonresponsive.

21   Q.   I'm asking you, sir, just based on these

22 numbers, just look at the same thing Doctor McCann

23 looked at, just these numbers, can you tell me just

24 based on these numbers that August Year 1 is more